

**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE**

MARTIN DURANT,

Plaintiff,

v.

PERFECT CARE NURSES, INC.,

Defendant.

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C.A. No. 04-1534 (KAJ)

JURY TRIAL DEMANDED

**APPENDIX TO OPENING BRIEF IN SUPPORT OF
DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

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Excerpts of Deposition Testimony of Martin Durant A1-A9

1 Q When did you first work for Perfect Care?

2 A If I can recall, it would be in 1998.

3 Q And how is it that you became associated
4 with Perfect Care?

5 A I was recommended by another employee.

6 Q For how long did you work for Perfect
7 Care during this time period?

8 A There was one breakage in employment. I
9 think that was in '99 -- I'm not sure which year it
10 was, but it was a breakage like for a year span that
11 I worked for another agency, and then I was
12 reemployed by Perfect Care. And I worked for them
13 until 2003 -- no, 2004 is last year. Yeah.

14 Q So if I understand your testimony
15 correctly, you worked for them for a period of time
16 in, say, 1998 -- and I'm not going to hold you to the
17 dates, because hopefully we'll be able to find
18 records that verify dates -- and you worked for them
19 for approximately a year; is that correct?

20 A Year.

21 Q And then you were somewhere else for
22 approximately a year; is that right?

23 A Yes, sir.

24 Q And then you came back to Perfect Care,

1 and you then worked for them through sometime in
2 2004; is that right?

3 A Yes, sir.

4 Q All right. In 1998, the first time in
5 essence you worked for Perfect Care, how were you
6 employed? What were you doing?

7 A I was employed as a nursing assistant.

8 Q And is that also how you were employed
9 during the second period of employment through
10 Perfect Care?

11 A Yes, sir.

12 Q And as a nursing assistant affiliated
13 with Perfect Care, what were you doing, in essence,
14 on a daily basis?

15 A On a daily basis, we were -- can you
16 rephrase that for me.

17 Q Sure, sure. In 1998, when you were
18 working as a nursing assistant through Perfect Care,
19 what were you doing when you would be assigned to a
20 facility?

21 A Okay. I would receive the assignment
22 from the office, and they would tell me where to go
23 on a daily basis. Sometimes they would give me an
24 assignment like for a month period. It fluctuated

1 hour. The rate would come back.

2 Like I said, there's some basic
3 rate. That's what I was told. So you get paid time
4 and a half for that time, that holiday, at a rate of
5 not what you worked for in Magnolia but at a
6 different rate.

7 Q I understand.

8 As you sit here today, can you
9 recall a specific holiday that you worked at Magnolia
10 Hall when that situation applied?

11 A That applied in every holiday situation.

12 Q I understand. But what I'm asking for
13 is, as you sit here today, can you tell me a specific
14 day, month, year when that situation took place?

15 A I don't recall offhand.

16 Q In 1998, when you became assigned with --
17 strike that.

18 In 1998, when you first became
19 affiliated with Perfect Care, did you have some sort
20 of signed contract or agreement that you had to
21 execute?

22 A I filled out an application and that was
23 it.

24 Q In 2002, do you know what your hourly

1 rate was with Perfect Care?

2 A I think it was \$14 an hour, in
3 Wilmington.

4 Q How about in '03?

5 A The rate was the same, \$14 during the
6 week, 14.50 on the weekend in Wilmington and \$17
7 elsewhere. Anywhere out of Wilmington, \$17 an hour.

8 Q And how about in '04?

9 A Likewise.

10 Q Now, when I first asked you the question
11 with regards to 1998 and also with regards to 2002,
12 you said "I think" before you gave me your answer.

13 What I'm just trying to find out
14 from you is, are you 100 percent sure that these are
15 the precise rates or is this just your best
16 recollection?

17 A That's my best recollection.

18 Q You mentioned when you would be outside
19 of the Wilmington area, that the hourly rate would be
20 higher; is that right?

21 A Yes, sir.

22 Q Do you know why the hourly rate was
23 higher?

24 A Said it would be paying for like your

1 Q All right. So the Perfect Care time
2 sheets, the invoices from Perfect Care to various
3 entities and the paycheck stubs, I'm assuming that
4 these documents were provided from you to your
5 attorneys?

6 A Yes. They were just some.

7 Q But it's everything that you have in your
8 possession?

9 A So far.

10 Q Are you still looking for additional
11 documents?

12 A Yes, sir.

13 Q And where are you looking?

14 A Facilities, banks and stuff like that. I
15 would cash my check, places like that.

16 Q Earlier we talked a little bit about your
17 gas and mileage reimbursement and that situation. I
18 just want to make sure I understand that correctly.

19 When you worked within Wilmington,
20 you did not submit a request for gas or mileage
21 reimbursement; is that correct?

22 A I never submitted an invoice or a request
23 for gas and mileage. I never did that.

24 Q Were you ever told not to?

1 A No.

2 Q Were you ever told that you couldn't do
3 that?

4 A Not that I can recall.

5 Q And it's my understanding that when you
6 worked outside of Wilmington, you received a higher
7 hourly rate to compensate you for gas and mileage; is
8 that correct?

9 A Yes, sir.

10 Q Mr. Durant, some of these documents that
11 I received from your attorney are difficult to read,
12 but I found one that I think we can work from. It's
13 stamped 0029 at the bottom. But is this one of these
14 Perfect Care time sheets that you were referring to?

15 A Yes, sir.

16 Q And is that your signature at the bottom,
17 the second signature from the bottom?

18 A Yes, sir.

19 Q And the handwriting under the block in
20 the middle there that's listed "time slip," I'm
21 guessing -- is the date in your handwriting?

22 A You're saying where? Where is this?

23 MS. MORRIS: Right there.

24 BY MR. SINGEWALD:

1 1998?

2 A I wouldn't be able to say.

3 Q Has she been at Magnolia since 2002?

4 A For the times -- if I can answer the
5 question this way, for the times that I've been going
6 to Magnolia through Perfect Care, she was there.

7 Q When you first -- when did you first
8 start going to Magnolia through Perfect Care?

9 A I can't remember the year offhand.

10 Q At any time since 2002 -- since January
11 of 2002, have you received any type of counseling?

12 A Counseling, no, sir.

13 Q No psychological, psychiatric counseling,
14 anything like that?

15 A No, sir.

16 Q Since speaking with Debbie Johnson and
17 then speaking with Perfect Care about the overtime
18 situation, since then have you had what I'll call
19 counseling sessions with anybody to discuss the
20 situation, other than your attorneys?

21 A No, sir.

22 Q How is it that you came to Margolis,
23 Edelstein and Mr. Martin with regard to this lawsuit?

24 A After I was told by Perfect Care that

1 he's not going to pay me, I decided to seek legal
2 advice.

3 Q And I understand that. But how is it
4 that you got to Mr. Martin and to his law firm?

5 A Well, I looked it up in the phone
6 directory.

7 Q Nobody referred you to him or suggested
8 you go see him, anything like that?

9 A No, sir.

10 Q Have you suffered any sort of physical
11 ailment as a result of your overtime -- uncompensated
12 overtime situation?

13 A I recently was told I was anemic because
14 of -- whatever reason. I don't know if that's a
15 result of me working hours of overtime.

16 Q What I was focusing on more so was, as a
17 result of this conversation that you apparently had
18 with Perfect Care and you were apparently allegedly
19 advised that you weren't going to be compensated for
20 overtime -- as a result of those conversations, did
21 you have any sort of physical ailment? Did you start
22 throwing up? Did you break your leg? Did you break
23 your arm --

24 A No, sir.

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1 Q -- anything like that?

2 A No, sir.

3 Q Did you have nightmares or wet your bed
4 or anything like that?

5 A No, sir.

6 Q No sort of emotional problems or anything
7 like that?

8 A No, sir.

9 Q Is there a difference between a nursing
10 assistant and a certified nursing assistant?

11 A Yes, sir.

12 Q What's the difference?

13 A The difference is that the certified
14 nursing assistant actually, you know, did a state
15 board; while the nursing assistant just did -- took
16 an examination to become a nursing assistant.

17 Q And in order to become a certified
18 nursing assistant, you have to take a state board?

19 A Yes, sir.

20 Q In order to be eligible to take that
21 test, you have to complete a certain course criteria?

22 A Yes, sir.

23 Q Have you completed that course criteria?

24 A Yes, sir.